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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 2401-0104-10
ICY FORBES,)	
Employee)	
)	Date of Issuance: May 15, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge

Icy Forbes, Employee *Pro-Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 27, 2009, Icy Forbes (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency” or “DCPS”) action of abolishing her position through a Reduction-In-Force (“RIF”). Employee received her RIF notice on October 2, 2009. The effective date of the RIF was November 2, 2009. Employee’s position of record at the time her position was abolished was Reading Teacher at Hamilton Center (“Hamilton”). Employee was serving in Educational Service status at the time her position was abolished. On December 9, 2009, Agency filed an Answer to Employee’s appeal.

I was assigned this matter on or around February 6, 2012. Thereafter, on February 9, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statutes, and regulations. Due to a typographical error in said order, I issued an Amended Order on February 17, 2012, which provided the parties with additional time in which to file their briefs. Agency submitted their brief as requested while Employee did not. On May 1, 2012, I issued an Order for statement of Good Cause to Employee which required her to submit her brief as well as a statement of good cause as to why she had not responded to my aforementioned February 17th order. Employee has since complied. In her response, Employee admitted that she retired from service. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force (“RIF”) pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor’s Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.¹

There is a question as to whether OEA has jurisdiction over this appeal. Employee stated in her brief that she retired from Agency after being removed from service via the instant RIF. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to OEA Rule 628.1, *id.*, the burden of proof is by a preponderance of the evidence which is defined as “[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.”

This Office has no authority to review issues beyond its jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ The issue of an Employee’s voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. OEA has consistently held that, there is a legal presumption that

¹ See *Agency’s Answer*, Tab 1 (December 9, 2009); *Agency’s Brief* dated March 5, 2012.

² See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

retirements are voluntary.⁴ Furthermore, I find that this Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary, is treated as a constructive removal and may be appealed to this Office.⁵ A retirement is considered involuntary “when the employee shows that retirement was obtained by agency misinformation or deception.”⁶ The Employee must prove that her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which she relied when making her decision to retire. She must also show “that a reasonable person would have been misled by the Agency’s statements.”⁷

Regardless of Employee’s protestations, I find that the facts and circumstances surrounding Employee’s retirement was Employee’s own choice and Employee has enjoyed the benefits of retiring. Employee’s choice to retire in the face of a seemingly unpleasant situation – financial hardship, does not make Employee’s retirement involuntary. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her option to retire. Based on the foregoing, I find that Employee’s retirement was voluntary.⁸ I further find that, this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

⁴ See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-1224-96 (October 23, 2001).

⁵ *Id.* at 587.

⁶ See *Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), and *Covington v. Department of Health and Human Services*, 750 F.2d 937 (Fed. Cir. 1984).

⁷ *Id.*

⁸ The Court in *Christie* stated that “[w]hile it is possible plaintiff, herself, perceived no viable alternative but to tender her resignation, the record evidence supports CSC’s finding that plaintiff chose to resign and accept discontinued service retirement rather than challenge the validity of her proposed discharge for cause. The fact remains, plaintiff *had a choice*. She could stand pat and fight. She chose not to. Merely because plaintiff was faced with an inherently unpleasant situation in that her choice was arguably limited to two unpleasant alternatives does not obviate the involuntariness of her resignation.” *Christie, supra* at 587-588. (citations omitted).